

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ETELBINA CACERES-MARCHAN,

Plaintiff,

v.

Commissioner of Social Security,

Defendant.

NO: 1:16-CV-3036-RMP

ORDER REMANDING FOR
FURTHER PROCEEDINGS

BEFORE THE COURT are Plaintiff Etelbina Cacaeres-Marchan's Motion for Summary Judgment, ECF No. 16, and Defendant Commissioner of Social Security's Cross-Motion for Summary Judgment, ECF No. 21. The Court has reviewed the pleadings, the administrative record, and is fully informed.

BACKGROUND

Plaintiff filed a Title II application for disability benefits and a Title XVI application for supplemental security income on June 8, 2012. *See* ECF No. 9-2, Tr. 22. Plaintiff alleged an onset of disability of April 24, 2012. *Id.* The claims were initially denied on October 26, 2012, and upon reconsideration on January 29, 2013. *Id.* Plaintiff was granted a hearing on June 9, 2014, before an

1 Administrative Law Judge (“ALJ”). The ALJ heard testimony from Plaintiff and
2 Vocational Expert (“VE”) Kimberly Mullinax. *Id.*

3 The ALJ found that Plaintiff had not engaged in substantial gainful activity
4 since April 24, 2012. *Id.* at 24. He further determined that Plaintiff has the
5 following six “severe” impairments: degenerative disk disease of the lumbar spine
6 (status/post fusion), hiatal hernia, obesity (status/post gastric bypass), bipolar
7 disorder, post-traumatic stress disorder, and personality disorder not otherwise
8 specified. *Id.* However, the ALJ found that these impairments did not meet or
9 equal any listed impairments. *Id.* at 25. Accordingly, the ALJ determined that
10 Plaintiff had the residual functional capacity (“RFC”) to perform “light work” as
11 defined in 20 C.F.R. 404.1567(b) and 416.967(b) with the following limitations:

12 she cannot crawl or climb ladders, ropes, scaffolding, ramps, or stairs.
13 She can occasionally balance, stoop, kneel, or crouch. She should avoid
14 concentrated exposure to vibration or hazards. She can perform simple
15 and routine tasks and can follow short and simple instructions. She can
16 perform work that needs little or no judgment and can perform simple
17 duties that can be learned on the job in a short period. She can perform
18 sustained work activities (i.e. can maintain attention and concentration;
19 persistence and pace) in an ordinary work setting on a regular and
20 continuing basis (i.e., eight hours per day, five days per week, or an
21 equivalent work schedule) within customary tolerances of employers’
rules regarding sick leave and absence. She requires a work
environment with minimal supervisor contact. [footnote omitted] She
needs a work environment without public contact and with no more than
[sic] superficial interactions with coworkers. She can work in
proximity to coworkers, but not in a cooperative or team effect. She
requires a work environment that is predictable and with few work
setting changes (i.e., a few routine and uninvolved tasks according to
set procedures, sequences, or pace, with little opportunity for diversion
or interruption).

1 *Id.* at 28.

2 Although the ALJ found that Plaintiff could not perform past relevant work,
3 he determined that “[t]ransferability of job skills is not material to the
4 determination of disability because using the Medical-Vocational Rules as a
5 framework supports a finding that the claimant is ‘not disabled,’ whether or not the
6 claimant has transferable job skills.” *Id.* at 38 (citations omitted). Therefore, the
7 ALJ determined that Plaintiff was not under a disability as defined by the Social
8 Security Act, and denied her applications for benefits.

9 STATEMENT OF FACTS

10 The facts of this case are set forth in the administrative hearing transcripts
11 and record, ECF No. 9. Plaintiff was thirty-two years old at the time of her alleged
12 onset of disability, ECF No. 9-2, Tr. 38, and thirty-four years old at the time of her
13 hearing in front of the ALJ, *id.* at 53. Plaintiff had past relevant work as a machine
14 packager, a fruit farm worker II, an industrial cleaner, a material handler, a yarn
15 winder, a boat patcher, a fast food worker, an amusement park worker, a
16 cleaner/housekeeper, and a sales representative. *See id.* at 38.

17 STANDARD OF REVIEW

18 Congress has provided a limited scope of judicial review of a Commissioner’s
19 final decision. 42 U.S.C. § 405(g). A reviewing court must uphold the
20 Commissioner’s decision, determined by an ALJ, when the decision is supported by
21 substantial evidence and not based on legal error. *See Jones v. Heckler*, 760 F.2d

1 993, 995 (9th Cir. 1985). Substantial evidence is more than a mere scintilla, but less
2 than a preponderance. *Sorenson v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir.
3 1975). Substantial evidence “means such relevant evidence as a reasonable mind
4 might accept as adequate to support a conclusion.” *Richardson v. Perales*, 402 U.S.
5 389, 401 (1971) (internal citation omitted).

6 The reviewing court should uphold “such inferences and conclusions as the
7 [Commissioner] may reasonably draw from the evidence.” *Mark v. Celebrezze*,
8 348 F.2d 289, 293 (9th Cir. 1965). On review, the court considers the record as a
9 whole, not just the evidence supporting the Commissioner’s decision. *Weetman v.*
10 *Sullivan*, 877 F.2d 20, 22 (9th Cir. 1989); *see also Green v. Heckler*, 803 F.2d 528,
11 530 (9th Cir. 1986) (“This court must consider the record as a whole, weighing
12 both the evidence that supports and detracts from the [Commissioner’s]
13 conclusion.”). “[T]he key question is not whether there is substantial evidence that
14 could support a finding of disability, but whether there is substantial evidence to
15 support the Commissioner’s actual finding that claimant is not disabled.”
16 *Jamerson v. Chater*, 112 F.3d 1064, 1067 (9th Cir. 1997).

17 It is the role of the trier of fact, not the reviewing court, to resolve conflicts
18 in evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one
19 rational interpretation, the reviewing court may not substitute its judgment for that
20 of the Commissioner. *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). Thus,
21 if there is substantial evidence to support the administrative findings, or if there is

1 conflicting evidence that will support a finding of either disability or nondisability,
2 the finding of the Commissioner is conclusive. *Sprague v. Bowen*, 812 F.2d 1226,
3 1229–30 (9th Cir. 1987).

4 SEQUENTIAL PROCESS

5 Under the Social Security Act (the “Act”),

6 an individual shall be considered to be disabled . . . if he is unable to
7 engage in any substantial gainful activity by reason of any medically
8 determinable physical or mental impairment which can be expected to
result in death or which has lasted or can be expected to last for a
continuous period of not less than 12 months.

9 42 U.S.C. § 1382c(a)(3)(A). The Act also provides that a claimant shall be
10 determined to be under a disability only if her impairments are of such severity that
11 claimant is not only unable to do her previous work but cannot, considering
12 claimant’s age, education, and work experience, engage in any other substantial
13 gainful work which exists in the national economy. 42 U.S.C. § 1382c(a)(3)(B).
14 “Thus, the definition of disability consists of both medical and vocational
15 components.” *Edlund v. Massanari*, 253 F.3d 1152, 1157 (9th Cir. 2001).

16 The Commissioner has established a five-step sequential evaluation process
17 for determining whether a claimant is disabled. 20 C.F.R. §§ 404.1520(a)(4) and
18 416.920. Step one determines if the claimant is engaged in substantial gainful
19 activities. If the claimant is engaged in substantial gainful activities, benefits are
20 denied. 20 C.F.R. §§ 404.1520(a)(4)(i) and 416.920(a)(4)(i).

1 If the claimant is not engaged in substantial gainful activities, the ALJ, under
2 step two, determines whether the claimant has a medically severe impairment or
3 combination of impairments. If the claimant does not have a severe impairment or
4 combination of impairments, the disability claim is denied. 20 C.F.R.
5 §§ 404.1520(a)(4)(ii) and 416.920(a)(4)(ii).

6 If the impairment is severe, the evaluation proceeds to step three, which
7 compares the claimant's impairment to a number of listed impairments
8 acknowledged by the Commissioner to be so severe as to preclude substantial
9 gainful activity. 20 C.F.R. §§ 404.1520(a)(4)(iii) and 416.920(a)(4)(iii); *see also*
10 20 C.F.R. §§ 404, Subpt. P, App. 1 and 416, Subt. I, App. 1. If the impairment
11 meets or equals one of the listed impairments, the claimant is conclusively
12 presumed to be disabled. 20 C.F.R. §§ 404.1520(a)(4)(iii) and 416.920(a)(4)(iii).

13 Before proceeding to step four, the claimant's residual functional capacity is
14 assessed. 20 C.F.R. §§ 404.1545(a)(1) and 416.945(a). An individual's residual
15 functional capacity is the ability to do physical and mental work activities on a
16 sustained basis despite limitations from any impairments. 20 C.F.R.
17 §§ 404.1545(a)(1) and 416.945(a).

18 If the impairment is not one conclusively presumed to be disabling, the
19 evaluation proceeds to step four, where the ALJ determines whether the
20 impairment prevents the claimant from performing work she has performed in the
21

1 past. If the claimant is able to perform her previous work, the claimant is not
2 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv) and 416.920(a)(4)(iv).

3 If the claimant cannot perform her previous work, the final step considers
4 whether the claimant is able to perform other work in the national economy in
5 view of her residual functional capacity, age, education, and past work experience.
6 20 C.F.R. §§ 404.1520(a)(4)(v) and 416.920(a)(4)(v).

7 At step five, the initial burden of proof rests upon the claimant to establish a
8 prima facie case of entitlement to disability benefits. *Rhinehart v. Finch*, 438 F.2d
9 920, 921 (9th Cir. 1971). The claimant satisfies this burden by establishing that a
10 physical or mental impairment prevents her from engaging in her previous
11 occupation. The burden then shifts to the Commissioner to show that (1) the
12 claimant can perform other substantial gainful activity, and (2) a “significant
13 number of jobs exist in the national economy” which the claimant can perform.
14 *Kail v. Heckler*, 722 F.2d 1496, 1498 (9th Cir. 1984). The Commissioner must
15 consider the claimant’s residual functional capacity, age, education, and work
16 experience to determine if that claimant could adjust to other work. 20 C.F.R. §§
17 404.1520(a)(4)(v) and 416.920(a)(4)(v).

18 ISSUES

19 Plaintiff raises three issues regarding the ALJ’s determination:

20 1. Did the ALJ commit harmful, reversible legal error in rejecting the
21 opinions of Ms. Monique Rogers and Dr. Matthew Johnson and in
giving greatest weight to non-examining reviewers Drs. Winslow and
Borton?

1 2. Did the ALJ commit harmful, reversible legal error by not
 2 considering the entirety of the objective medical evidence, and did this
 3 failure result in an erroneous Residual Functional Capacity assessment?
 4 3. Did the ALJ commit harmful, reversible legal error in discounting
 5 Ms. Caceres-Marchan's credibility on the basis of her activities of daily
 6 living and her attempts to work?

7 ECF No. 16 at 8-9.

8 The Court addresses Plaintiff's claims in order of their importance to the
 9 Court's analysis, which differs from how they were presented by the parties.

10 **I. Rejection of Medical Opinions**

11 As part of the disability determination, the ALJ must consider the opinions of
 12 the claimant's medical providers. 20 C.F.R. §§ 404.1527(b) and 416.927(b). An
 13 ALJ may consider the opinions of three types of physicians: treating, examining, and
 14 non-examining. *Garrison v. Colvin*, 759 F.3d 995, 1012 (2014). The ALJ must give
 15 the greatest weight to testimony offered by a treating physician. *Id.* Factors that
 16 may be considered in weighing the evidentiary value of a medical opinion include:
 17 (1) the type of doctor; (2) the amount of relevant evidence in support of the opinion;
 18 (3) consistency with the record as a whole; (4) whether the opinion is from a
 19 specialist; and (5) any other factors deemed relevant. 20 C.F.R. §§ 404.1527(c)(1)-
 20 (6) and 416.927(c)(1)-(6).

21 Where a treating physician's opinion is uncontroverted, the ALJ must find
 "clear and convincing" reasons to reject that opinion. *Smolen v. Chater*, 80 F.3d
 1273, 1285 (1996); *see also Garrison*, 759 F.3d at 1012 (same standard for
 rejecting the opinions of examining physicians). However, "specific and

1 legitimate” reasons are sufficient to reject a controverted opinion when supported
2 by substantial evidence for doing so. *But see Lester v. Chater*, 81 F.3d 821, 830–
3 31 (9th Cir. 1995) (“The opinion of a nonexamining physician cannot by itself
4 constitute substantial evidence that justifies the rejection of the opinion of either an
5 examining physician *or* a treating physician.”). To support a decision with
6 substantial evidence, an ALJ must provide a “detailed and thorough summary of
7 the facts and conflicting clinical evidence, stating [the] interpretation thereof, and
8 making findings.” *Garrison*, 759 F.3d at 1012 (citing *Reddick v. Chater*, 157 F.3d
9 715, 725 (9th Cir. 1998)).

10 An ALJ commits error if the ALJ rejects a medical opinion “without
11 explanation that another medical opinion is more persuasive or criticizing with
12 boilerplate language that fails to offer a substantive basis” for the rejection. *Id.* at
13 1012-13.

14 **A. Dr. Matthew Johnson**

15 Dr. Johnson treated Plaintiff as her primary care provider since 2009, *see*
16 ECF No. 9-8, Tr. 898; therefore, he is a treating medical provider. After having
17 seen Plaintiff over the course of years, as documented throughout the
18 administrative record, Dr. Johnson submitted medical reports for the ALJ to
19 consider. *See e.g.*, ECF No. 9-7, Tr. 606-07; ECF No. 9-8, Tr. 898-99, and 950-51.
20 In February of 2013, Dr. Johnson opined that Plaintiff would need to lie down
21 during the day, that work would cause her condition to deteriorate, and that she

1 could be expected to miss an average of four or more days per month of work due
2 to pain that would be most severe at the end of an eight-hour day. *Id.* at 898-99.

3 On both October 14, 2013, and May 14, 2014, Dr. Johnson's opinion was similar
4 and he added that Plaintiff experienced an inability to focus/concentrate, *id.* at 606-
5 07, and suffered from fatigue "from pain and bipolar meds." *Id.* at 950-51.

6 Despite Dr. Johnson's extensive history with Plaintiff, the ALJ rejected his
7 opinion by stating that he gave:

8 minimal to no weight to these latter opinions from Dr. Johnson. As his
9 basis for these opinions, Dr. Johnson asserted that the claimant had
10 fatigue, back pain, and an inability to focus or concentrate. He asserted
11 that her limitations were due to chronic pain and bipolar disorder (28F).
12 However, Dr. Johnson's treatment records after March 2013
13 consistently noted that the claimant displayed normal memory, normal
14 mood and affect, and normal ambulation. These treatment records do
15 not refer to fatigue. His examinations did not otherwise note positive
16 signs of physical impairment. When seeking care for back pain in
17 August 2013, the claimant displayed intact sensation and steady gait.
18 At this time, she stated that her back pain had been ongoing for three
19 weeks. Her current medications only consisted of psychiatric
20 medications. She was given pain medication and muscle relaxers. Her
21 symptoms improved with this medication.

Id. at 35. (citations omitted).

22 The ALJ's justifications are neither valid nor legitimate reasons to discount
23 the medical opinion of this treating source. Normal memory, mood, affect,
24 ambulation, sensation, and gait do not preclude the experience of severe, limiting
25 pain that would be consistent with Dr. Johnson's conclusions. Furthermore, the
26 ALJ's reference to a medical appointment in August of 2013 is confusing as the
27 documentation he cites supports Dr. Johnson's conclusions (although the ALJ's

1 cursory discussion omits important details). *See* ECF No. 9-8, Tr. 703-08. As the
2 ALJ selectively cited five pages within the middle of a 152-page document, a
3 review of those selected pages demonstrates that Plaintiff was seen regarding her
4 back pain, and that her pain was severe enough that the clinic tried three different
5 pain medications before finally obtaining a response with Hydrocodone-
6 Acetaminophen. *See id.* Dr. Johnson's reports that summarize his opinions do not
7 conflict with his clinical notes simply because they not include the word "fatigue"
8 or that Plaintiff's pain was not apparent in every one of her physical symptoms
9 annotated in the record.

10 In a vague, conclusory manner, the ALJ stated that "Dr. Johnson's assertion
11 of frequent rest breaks and frequent absences are [sic] otherwise inconsistent with
12 the claimant's activities following her spinal surgery in February 2013, which are
13 discussed in detail earlier in this decision." ECF No. 9-2, Tr. 35. The Court is
14 unable to determine what activities the ALJ relies upon, but nonetheless, his
15 discussion of aforementioned "activities" fails to serve as a specific and legitimate
16 basis that would support his rejection of Dr. Johnson's medical opinion. The ALJ
17 could be referencing his discussion of Plaintiff's work history prior to the alleged
18 onset of her disability, his repeated citation to characteristics like "appropriate
19 grooming," *id.* at 32; the position Plaintiff was fired from at JC Penney, *id.*;
20 Plaintiff's alleged ability to complete household chores, *id.*; or the fact that in
21 September 2012, Plaintiff was "vising [sic] parks, and taking walks with her

1 daughters,” *id.*; but none of these facts undercuts Dr. Johnson’s opinion regarding
2 Plaintiff’s ability to work in a full-time, long-term employment setting. The ALJ
3 was obligated to support his decision with specific citations to evidence, not to
4 broadly cite back to earlier parts of his own decision.

5 The parties dispute whether the Court should apply the heightened standard
6 requiring “clear and convincing” reasons to discount Dr. Johnson’s opinion as
7 Plaintiff argues that Dr. Johnson’s opinion is not contradicted. However, the Court
8 need not determine whether or not the opinion is adequately controverted to invoke
9 the heightened standard because the ALJ’s rejection of Dr. Johnson’s medical
10 opinions is unsupported by “specific and legitimate reasons,” and therefore, it fails
11 to meet the lower threshold for controverted opinions.

12 The ALJ’s inadequate analysis and rejection of Dr. Johnson’s opinions is
13 sufficient to remand this case for further proceedings, but for the benefit of the
14 parties on remand, the Court will address some of Plaintiff’s other contentions.

15 **B. Dr. Billings and Ms. Roger**

16 Although Plaintiff only briefly references Dr. Billings in her motion for
17 summary judgment, the Court notes that the ALJ’s rejection of her opinion ignores
18 the facts of this case and the nature of Plaintiff’s severe impairments. Dr. Billings
19 opined that Plaintiff

20 does appear to have a long history of psychiatric treatment with prior
21 hospitalizations. It can be expected that she will continue to have
difficulties due to her bipolar disorder, which appears to have
intermittent cycling. These difficulties are an interference in both social

1 and employment actions. It is anticipated that she will be unable to
2 maintain any long-term employment.

3 ECF No. 9-7, Tr. 387.

4 The ALJ gave minimal weight to this opinion calling it an “equivocal and
5 cursory” assessment. ECF No. 9-2, Tr. 35. Dr. Billings’ psychological evaluation
6 is neither equivocal nor cursory, and the ALJ fails to support his cursory
7 assessment of her medical opinion with legitimate justifications. The ALJ stated
8 that Dr. Billings’ assessment was inconsistent with Plaintiff’s “pursuit of various
9 work activities since her alleged onset date, which have been despite considerable
10 domestic responsibilities,” and he cited Plaintiff’s work history and times when
11 Plaintiff has presented well. *Id.* Plaintiff’s failed attempts to find stable, long-term
12 employment or the fact that she worked prior to her alleged onset date, are not
13 inconsistent with Dr. Billings’ finding that Plaintiff would be unable to maintain
14 long-term employment.

15 The ALJ’s errors continued as he selectively cited instances when Plaintiff
16 presented well, with such positive attributes as “appropriate grooming, normal
17 psychomotor activity, cooperative behavior, coherent and directed thought process,
18 fair judgment, stable mood, pleasant affect, and no impairment in her memory or
19 intellectual functioning.” *Id.* (citations omitted). In this discussion, and
20 throughout the ALJ’s decision, the ALJ ignores the nature of bipolar disorder. As
21 Dr. Billings stated, Plaintiff’s symptoms appeared to have intermittent cycling, so
the ALJ’s selective citations to records of Plaintiff doing well are consistent with

1 Dr. Billings' opinion. This is especially true considering the facts regarding
2 Plaintiff's criminal charge, her hospitalizations, her presentation as manic, etc. *See*
3 *e.g.*, ECF No. 9-8, Tr. 921.

4 Regarding the opinion of Ms. Roger, a licensed clinical social worker who
5 worked extensively with Plaintiff over the course of years, the parties dispute the
6 weight that should be given to this source who is not an "acceptable medical
7 source." *See* ECF No. 21 at 12. Regardless of the standard applied, the Court
8 finds that the ALJ's discounting of Ms. Roger's opinion is based at least in part on
9 inadequate justifications similar to those applied to Drs. Johnson and Billings.

10 As the ALJ did throughout his decision, the ALJ vaguely referenced broad
11 facts to demonstrate inconsistencies that are not apparent. *See e.g.*, ECF No. 9-2,
12 Tr. 37. For example, the ALJ noted that Ms. Roger opined that Plaintiff could not
13 work full-time due to her bipolar disorder, but the ALJ rejected Ms. Roger's
14 findings of disability, and stated that her relevant statements are "inconsistent with
15 the claimant's work history, activities since her alleged onset date, and longitudinal
16 psychological signs since her alleged onset, which are summarized in the prior
17 discussion of the 'paragraph B' criteria." *Id.* This vague justification is neither
18 specific nor legitimate; a recent work history that reflects only short-term
19 positions, at least one of which Plaintiff was fired from, and longitudinal
20 psychological signs such as a hospitalization in 2014 and continued suffering due
21 to bipolar disorder do not conflict with Ms. Roger's opinion.

1 The Court also notes that the ALJ gave “significant weight” to the opinions
2 of Drs. Winslow and Borton, who never treated or examined Plaintiff and gave
3 their opinions in October of 2012 and January of 2013, respectively. Their review
4 of an incomplete record was given greater weight than opinions from providers
5 who had more substantive relationships with Plaintiff. *See id.* at 25. These
6 opinions, along with the complete record, need to be re-evaluated using the proper
7 applicable standards upon remand.

8 **II. Credibility Determination**

9 The Commissioner’s credibility determination must be supported by
10 findings sufficiently specific to permit the reviewing court to conclude the ALJ did
11 not arbitrarily discredit a claimant’s testimony. *Bunnell v. Sullivan*, 947 F.2d 341,
12 345–46 (9th Cir. 1991). If there is no affirmative evidence that the claimant is
13 malingering, the ALJ must provide “clear and convincing” reasons for rejecting the
14 claimant’s testimony regarding the severity of symptoms. *Reddick*, 157 F.3d at
15 722.

16 If the ALJ finds that a claimant’s statements are not credible, she need not
17 reject the entirety of a claimant’s symptom testimony. *See Robbins v. Social Sec.*
18 *Admin.*, 466 F.3d 880, 883 (9th Cir. 2006). The ALJ may find the claimant’s
19 statements about pain to be credible to a certain degree, but discount statements
20 based on her interpretation of evidence in the record as a whole. *See id.* If the
21 credibility findings are supported by substantial evidence in the record, the

1 reviewing court may not second-guess the ALJ's determination. *See Morgan v.*
2 *Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999). However, an
3 ALJ's failure to articulate specifically "clear and convincing" reasons for rejecting
4 a claimant's subjective complaints is reversible error. *Orn v. Astrue*, 495 F.3d 625,
5 635 (9th Cir. 2007).

6 In addition to ordinary techniques of credibility evaluation, the ALJ may
7 consider the following factors when weighing the claimant's credibility: the
8 claimant's reputation for truthfulness; inconsistencies either in allegations of
9 limitations or between statements and conduct; daily activities; work record; and
10 testimony from physicians and third parties concerning the nature, severity, and
11 effect of the claimant's alleged symptoms. *Light v. Social Sec. Admin.*, 119 F.3d
12 789, 792 (9th Cir. 1997).

13 The ALJ summarily dismissed Plaintiff's credibility by first stating that her
14 "statements concerning the debilitating intensity, persistence, and limiting effects
15 of these symptoms are not credible for the reasons explained in this decision."
16 ECF No. 9-2, Tr. 29. Despite the ALJ's vague reference to an explanation in his
17 decision, he fails to support his reasoning with sufficient particularity. Instead, the
18 ALJ followed his conclusion by discussing Plaintiff's history in a way that
19 downplays and omits facts that would conflict with the ALJ's decision. *See id.* at
20 29-34.

1 For example, the ALJ stated that Plaintiff's "records indicate ongoing
2 difficulties with her psychological state, but which have been generally well-
3 controlled with her longstanding psychiatric medication regimen." *Id.* at 31. The
4 ALJ's conclusion is belied by the record. Plaintiff voluntarily participated in
5 inpatient treatment for two days in 2013, was arrested after making threats to kill
6 herself and others, was involuntarily hospitalized for more than twelve days in
7 2014, and has struggled with depression and manic states as reflected throughout
8 the record. The ALJ downplays serious mental health problems as being
9 "moderate limitations with social interactions," and he repeatedly cites notations
10 when Plaintiff presented well and was described as having positive traits such as
11 "appropriate grooming, and normal psychomotor activity." *See e.g., id.* at 32.
12 Plaintiff's ongoing struggle with mental health is apparent from the record, and the
13 ALJ fails to support his rejection of Plaintiff's credibility with specific, legitimate
14 reasons.

15 The Government has liberally construed the ALJ's discussion of Plaintiff's
16 credibility and has gleaned three reasons that it argues support the ALJ's
17 conclusion. *See* ECF No. 21 at 6. The Government argues that "the ALJ
18 discounted Plaintiff's subjective statements because (1) her testimony was
19 inconsistent with the medical evidence; (2) her symptoms improved with
20 treatment; and (3) her testimony was inconsistent with her activities (Tr. 29-34)."
21 *Id.*

1 First, the ALJ's broad discussion did not specify what medical evidence was
2 inconsistent with what testimony. The ALJ's discussion of normal functions, such
3 as steady gait, normal reflexes, etc., *see e.g.*, ECF No. 9-2, Tr. 30, does not
4 demonstrate that Plaintiff did not experience pain following her successful surgery
5 that would limit her ability to work as stated by Dr. Johnson. *See* ECF 9-8, Tr.
6 899. Importantly, this portion of the Government's argument ignores mental
7 health symptoms and focuses only on Plaintiff's physical symptoms. *See* ECF No.
8 21 at 6-8.

9 The ALJ accurately noted that Plaintiff's symptoms improved with some
10 treatments, but as noted throughout the record, Plaintiff continues to suffer from
11 intermittent episodes of depression, mania, and other mental health symptoms. For
12 example, Dr. Johnson's treatment notes from April 10, 2014, state "apparently the
13 gabapentin given to her by water's edge did not mix well with her bipolar. [W]as
14 at the ER last night with a panic disorder – still highly anxious today. [W]as given
15 some lorazepam in the ER." ECF No. 9-8, Tr. 853. The ALJ's discussion of what
16 he deemed "improvement" ignores the episodic nature of bipolar disorder and the
17 continuing nature of Plaintiff's symptoms.

18 As recently as 2014, Plaintiff was involuntarily placed in inpatient
19 psychiatric care after "[s]he became verbally hypervocal with [sic] not making
20 any sense and was not able to attend to her ADLs. She also made statements of
21 wanting to kill her sister, boyfriend and herself. Prior to statements, she was then

1 [sic] followed in an altercation at Macy's department store which became
2 physical." *Id.* at 921. Although the Government may dismiss this episode as a
3 result of medication non-compliance (although the ALJ noted the conflicting
4 reports as to whether or not Plaintiff was on her medication at that time, ECF No.
5 9-2, Tr. 33), if Plaintiff displayed unwillingness or an inability to adhere to her
6 medication regime due to her mental impairments, then this episode would still be
7 a result of Plaintiff's struggles with mental disabilities.

8 The record demonstrates that, consistent with the nature of bipolar disorder,
9 Plaintiff's symptoms fluctuate, and although she may function well at times, she
10 struggles with the impairments imposed by her mental illness even while on
11 medication. *See e.g.*, ECF No. 9-7, Tr. 440-41 (Ms. Rogers wrote that Plaintiff
12 was "stressed, and tearful, unable to sleep, frustrated with her inability to
13 concentrate on studies or retain information, and fearful about her economic future
14 if she cannot succeed," but also found Plaintiff to be compliant with her treatment
15 and medication at that time.).

16 The Government's final justification for discounting Plaintiff's credibility is
17 that the ALJ found Plaintiff's testimony to be inconsistent with her activities. *See*
18 ECF No. 21 at 9. The Government argues that

19 [t]he ALJ reasonably found that, contrary to her testimony, her
20 activities "indicate that she is able to tolerate routine social contact, that
21 she can maintain a schedule, and that she has been able to persist with
at least simple tasks" (Tr. 33). She reported that much of her time had
been devoted to caring for her three children, including taking them to
frequent appointments (Tr. 33-34, 64-65, 74-75). On a daily basis, she

1 would get her children ready for school (Tr. 33-34, 64-66, 71, 384).
2 She performed all of the household chores, including shopping,
3 cooking, and cleaning (Tr. 33-34, 65, 292, 384-85). While her children
4 were at school, she attended at least five hours or [sic] classes per day
5 as part of a training program (Tr. 33-34, 64-66).

6 *Id.*

7 The Ninth Circuit “has repeatedly asserted that the mere fact that a plaintiff
8 has carried on certain daily activities . . . does not in any way detract from her
9 credibility as to her overall disability.” *Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir.
10 2007). While it is correct that the “Social Security Act does not require that
11 claimants be utterly incapacitated to be eligible for benefits . . . and many home
12 activities are not easily transferable to . . . the workplace,” activities of daily living
13 may be considered “if a claimant is able to spend a substantial part of his day
14 engaged in pursuits involving the performance of physical functions that *are*
15 transferable to a work setting.” *Fair v. Bowen*, 885 F.3d 597, 603 (9th Cir. 1989)
16 (emphasis in original). However, a claimant’s activities of daily living that require
17 flexibility regarding rest periods or assistance from other persons are generally not
18 transferable to a work environment. *See Garrison v. Colvin*, 759 F.3d 995, 1016
19 (9th Cir. 2014).

20 The ALJ’s third justification lacks legitimacy as the ALJ does not clearly
21 state how Plaintiff’s daily activities are inconsistent with her testimony.
Furthermore, the fact that Plaintiff is able to get her children ready for school and
to complete household chores does not prove that she is not sufficiently disabled

1 for the purpose of full-time work. The ALJ's vague justifications for discounting
2 Plaintiff's credibility are not specific or legitimate, and fall short of providing
3 "clear and convincing" reasons to discount her testimony.

4 Based on the Court's findings of error outlined above, the Court need not
5 rule on Plaintiff's other allegations of error. The ALJ shall conduct a de novo
6 review and apply the proper standards to all evidence submitted in this matter.

7 Accordingly, **IT IS HEREBY ORDERED:**

8 1. Plaintiff's Motion for Summary Judgment, **ECF No. 16**, is **GRANTED**.

9 2. Defendant's Motion for Summary Judgment, **ECF No. 21**, is **DENIED**.

10 3. This case is **REMANDED** for a *de novo* hearing before the Social
11 Security Administration.

12 4. **UPON REMAND**, the ALJ will conduct a *de novo* hearing and issue
13 a new decision that is consistent with the applicable law set forth in this Order.
14 The ALJ will, if necessary, further develop the record, reassess the claimant's
15 residual functional capacity, obtain supplemental evidence from a vocational
16 expert, and re-evaluate the credibility of the claimant and other opinion evidence.

17 5. **JUDGMENT** shall be entered for Plaintiff.

18 The District Court Clerk is directed to enter this Order and provide copies to
19 counsel, **enter judgment**, and **close this case**.

20 **DATED** March 29, 2017.

s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge